

Individual Debt Adjustment Bankruptcy - Chapter 13

Public Information Series of the Bankruptcy Judges Division
(as revised by and for the District of Rhode Island, December,
2003)

Background

Chapter 13 of the Bankruptcy Code is designed for people with regular income who have some ability to pay their debts over time. The purpose of chapter 13 is to enable the financially-distressed debtor, under bankruptcy court supervision and protection, to propose and carry out a plan to pay all creditors from future income. The debtor may pay the creditors, in full or in part, in monthly installments over a three-year period. During that time creditors are prohibited from starting or continuing collection efforts. A plan providing for payments over more than three years must be "for cause" and be approved by the court. In no case may a plan provide for payments over a period longer than five years. 11 U.S.C. § 1322(d). When the debtor completes all the plan payments, the debtor receives a discharge.

Bankruptcy law is complex. Therefore, prior to filing a bankruptcy petition, every person should, if possible, consult competent legal counsel to represent him or her throughout the time the case is pending and in all aspects of the case.

Any person with regular income, even if self-employed or operating an unincorporated business, is eligible for chapter 13 relief, as long as his or her unsecured debts are less than \$290,525 and secured debts are less than \$871,550. 11 U.S.C. § 109(e). A corporation or partnership cannot be a chapter 13 debtor. A husband and wife may file a joint petition or individual petitions.

How Chapter 13 Works

A debtor begins a chapter 13 case by filing a petition with the bankruptcy court serving the area where the debtor lives. The debtor must file with the court:

1. schedules of all assets and all debts,
2. a schedule of current income and expenses,

3. a schedule of executory contracts and unexpired leases,
4. a statement of financial affairs,
5. a Chapter 13 agreement between debtor and counsel (Official Form V to the Rhode Island Local Bankruptcy Rules), and
6. a Chapter 13 plan.

It is very important that the debtor file these documents on time and ensure that they are complete and accurate. Failure to file on time and failure to file documents that are complete and accurate can have serious consequences, including dismissal of the case. The debtor should be especially careful to list every creditor and every asset. The court or the Chapter 13 trustee may require the debtor to file additional documents.

The forms are not available from the court, but if you have access to a computer, you can download and print them from this court's web site: **www.rib.uscourts.gov**.

Currently, the court filing fee is \$194.00. The fee is paid to the clerk of the court upon filing or may, with the court's permission, be paid in installments.

In order to complete the Official Bankruptcy Forms which make up the petition, statement of financial affairs, and schedules, the debtor will need to compile the following information:

1. A list of all creditors, their addresses, and the amounts and nature of their claims;
2. The source, amount, and frequency of the debtor's income;
3. A list of all of the debtor's property; and
4. A detailed list of the debtor's monthly living expenses, i.e., food, clothing, shelter, utilities, taxes, transportation, medicine, etc.

This information must be submitted for **both spouses**, even if only one files a bankruptcy case. The debtor is responsible for reporting to the court and the trustee any changes in personal circumstances during the time the case is pending, such as a change in address, income, or employment.

Upon the filing of the petition, the chapter 13 trustee

administers the case. A primary role of the chapter 13 trustee is to serve as a disbursing agent, collecting payments from debtors and making distributions to creditors.

The Automatic Stay

The filing of the petition under chapter 13 "automatically stays" most collection actions against the debtor or the debtor's property. 11 U.S.C. § 362. As long as the "stay" is in effect, creditors generally cannot initiate or continue any foreclosure proceedings, repossession of property, lawsuits, wage garnishment, or even telephone calls demanding payments. Creditors receive notice of the filing of the petition from the court clerk. Further, after the commencement of a chapter 13 case, a creditor may not seek to collect a "consumer debt" from any individual who is liable with the debtor. 11 U.S.C. § 1301. Consumer debts are those incurred for consumer, as opposed to business, needs.

The automatic stay is an important protection for debtors. A debtor faced with a threatened foreclosure of the mortgage on his or her home can prevent the foreclosure by filing a chapter 13 petition. Chapter 13 then gives the debtor a right to cure defaults on the home mortgage debt by making payments over a reasonable period of time. In addition to making payments to cure the pre-bankruptcy defaults, the debtor must keep current on mortgage payments as they become due each month. If the debtor fails to keep current, the lender may file a "motion for relief from stay." If the debtor files a timely opposition to that motion, the court will schedule a hearing. Failure to make post-bankruptcy payments may be the basis for the court to allow the creditor to foreclose.

The Chapter 13 Plan

The debtor must file a chapter 13 plan with the petition or within fifteen days thereafter. The chapter 13 plan must provide for the full payment of certain claims entitled to priority under Bankruptcy Code section 507¹ (for example, certain tax claims) and provide for payment of unsecured claims to the extent the debtor has disposable future income. 11 U.S.C. § 1322. Disposable income is defined as income not reasonably

necessary for the maintenance or support of the debtor or dependents.

Other plan provisions are permissive. Plans, which must be confirmed or approved by the court, provide for payments of fixed amounts to the chapter 13 trustee on a regular basis, usually monthly. The trustee then distributes the funds to creditors according to the terms of the plan, which may offer creditors less than full payment on their claims. If the trustee or a creditor objects to confirmation of the plan, the court will hold a hearing and rule on the objection.

A meeting of creditors (called the Section 341 meeting) is held in every case, usually about 30 days after the petition is filed. The debtor must attend the meeting and answer questions under oath. Creditors may appear and ask questions regarding the debtor's financial affairs and the proposed terms of the plan. 11 U.S.C. § 343. If a husband and wife have filed a joint petition, both must attend the creditors meeting. The trustee presides at the meeting and questions the debtor on the same matters. If there are problems with the plan, they are typically resolved during or shortly after the creditors' meeting. Generally, problems may be avoided if the petition and plan are complete and accurate.

In a chapter 13 case, unsecured creditors who have claims against the debtor must file their claims with the court within 90 days after the first date set for the meeting of creditors. Governmental units have a somewhat longer period to file claims.

Any creditor may file an objection to confirmation of the plan no later than seven (7) days before the hearing on confirmation. All timely filed objections will be considered at the confirmation hearing. At least forty-eight (48) hours prior to the hearing on confirmation, the debtor's attorney, the debtor, if pro se, and any objector to the Chapter 13 plan are required to confer with the Chapter 13 trustee regarding the proposed plan, its feasibility and permissibility, and any objections to the proposed plan. At the confirmation hearing, the court will determine if the plan is feasible and meets the standards for confirmation set forth in the Bankruptcy Code.

While a variety of objections may be made, the most frequent ones are that payments offered under the plan are less than creditors would receive if the debtor's assets were liquidated or that the debtor's plan does not commit all of the debtor's projected disposable income for the duration of the plan.

Within thirty days after the filing of the plan, the **debtor must start making payments to the trustee**. The debtor must do so even if the plan has not yet been confirmed by the court. If the plan is confirmed, the chapter 13 trustee commences distribution of the funds received in accordance with the plan "as soon as practicable." 11 U.S.C. § 1326(a)(2). If the plan is not confirmed, the debtor has a right to file a modified plan within eleven (11) days. The debtor also has a right to convert the case to a liquidation case under chapter 7. 11 U.S.C. § 1307. And generally, if the case was not converted to Chapter 13 from another chapter, the debtor may voluntarily dismiss the case at any time. If the plan or modified plan is not confirmed and the case is dismissed, the court may authorize the trustee to retain a specified amount for costs, but all other funds paid to the trustee are returned to the debtor. On occasion, changed circumstances will affect a debtor's ability to make plan payments, a creditor may object or threaten to object to a plan, or a debtor may inadvertently have failed to list all creditors. In such instances, the debtor may modify the plan either before or after confirmation. Modification after confirmation is not limited to an initiative by the debtor, but may be at the request of the trustee or an unsecured creditor.

Making the Plan Work

The provisions of a confirmed plan are binding on the debtor and each creditor. 11 U.S.C. § 1327. Once the court confirms the plan, it is the responsibility of the debtor to make the plan succeed. The debtor must make regular payments to the trustee, which will require adjustment to living on a fixed budget for a prolonged period. And, while confirmation of the plan entitles the debtor to retain property as long as

payments are made, the debtor may not incur any significant new credit obligations without consulting the trustee, because these credit obligations may have an impact upon the execution of the plan.

If the debtor fails to make the payments in accordance with the confirmed plan, the court may dismiss the case or convert it to a liquidation case under chapter 7 of the Bankruptcy Code. 11 U.S.C. § 1307(c).

The Chapter 13 Discharge

The chapter 13 debtor is entitled to a discharge upon successful completion of all payments under the chapter 13 plan. 11 U.S.C. § 1328(a). The discharge has the effect of releasing the debtor from all debts provided for by the plan or disallowed (under section 502), with limited exceptions. Those creditors who were provided for in full or in part under the chapter 13 plan may no longer begin or continue any legal or other action against the debtor to collect the discharged obligations.

As a general rule, the debtor is discharged from all debts provided for by the plan or disallowed, except certain long term obligations (such as a home mortgage), debts for alimony or child support, student loan debts, debts arising from death or personal injury caused by driving while intoxicated or under the influence of drugs, and debts for restitution or a criminal fine included in a sentence on the debtor's conviction of a crime. 11 U.S.C. § 1328(a). To the extent that these types of debts are not fully paid pursuant to the chapter 13 plan, the debtor will still be responsible for these debts after the bankruptcy case has concluded. While the information presented herein is accurate as of the date of publication, it should not be cited or relied upon as legal authority. This information should not be used as a substitute for reference to the United States Bankruptcy Code (title 11, United States Code) and the Bankruptcy Rules, both of which may be reviewed at local law libraries, or to any local rules of practice adopted and disseminated by each bankruptcy court. Finally, this fact sheet should not substitute for the advice of competent legal counsel.

NOTES

1. Section 507 sets forth nine categories of unsecured claims which Congress has, for public policy reasons, given priority of distribution over other unsecured claims.
2. An unsecured debt generally may be defined as a debt for which the creditor has no collateral (for example, the debtor's car or home) to sell in order to satisfy the debt.

While the information presented herein is accurate as of the date of publication, it should not be cited or relied upon as legal authority. This information should not be used as a substitute for reference to the United States Bankruptcy Code (title 11, United States Code) and the Bankruptcy Rules, both of which may be reviewed at local law libraries, or to any local rules of practice adopted and disseminated by each bankruptcy court. Finally, this fact sheet should not substitute for the advice of competent legal counsel.